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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 966

THE HEARST CORPORATION, BALTIMORE NEWS AMERICAN DIVISION

Petitioner,

v.

LOCAL UNION NO. 24, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent,

ON A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT LOCAL UNION NO. 24, IN OPPOSITION

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ON A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

QUESTION PRESENTED

Is the question of whether or not a lockout took place an arbitrable issue where, during the term of a collective bargaining agreement with the union providing that: "There shall be no stoppage of work either by strike or lockout during the term of this agreement" and that such disputes must be arbitrated, an employer locks out its employees because of an alleged dispute with other labor organizations engaged in a strike with another company.

ARGUMENT

Petitioner's main ground for urging the grant of its Petition for Certiorari is its contention that the decision of the court below conflicts with that of *Independent Petroleum Workers v. American Oil,* 324 F. 2d 903 (7 Cir., 1963). The latter case is distinguishable.

The arbitration provisions in *Petroleum Workers* were not nearly as broad as those contained in the Hearst-Local 24 collective bargaining agreement or in the 1960 Trilogy of cases on arbitration.[1] Indeed, the Petroleum Workers agreement specifically limited arbitration to three types of disputes.[2] That agreement also provided that matters re-

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[1] *United Steelworkers of America v. American Mfg. Co.,* 363 U.S. 564, 4 L.Ed 2d 1403, 80 SCT 1343 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation,* 363 U.S. 574, 4 L.Ed 2d 1409, 80 SC 1347 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.,* 363 U.C. 593, 4 L.Ed 2d 1424, 80 SCT 1358 (1960). See also *John Wiley & Sons, Inc., v. Livingston,* 373 U.S. 543, 11 L.Ed 2d 898, 84 SCT 909 (1964); *Atkinson v. Sinclair Refining Co.,* 370 U.S. 238, 8 L.Ed 2d 462, 82 SCT 1318 (1962); *A. S. Abell Co. v. Baltimore Typographical Union #12,* 338 F. 2d 190 (4 CCA, 1964).

[2] A. Questions which may be referred to arbitration shall be limited to:

1. Questions directly involving or arising from applications, interpretations or alleged violations of the terms of this agreement.

2. Questions directly involving or arising from applications of the terms of arbitration awards and written agreements not incorporated in this Agreement.

3. Questions of applications or interpretations of or alleged noncompliance with past policies, practices, customs or usages relative to working conditions, and grievances arising from:

(a) the modification by the Company of any of said policies, practices, customs and usages, or

(b) the discontinuance by the Company of any of said policies, practices, customs and usages, or

lating to rates of pay, hours of employment and other conditions of employment not covered in the agreement would be subject to bargaining by the employer; but on these subjects the employer could refuse to arbitrate, in which event the no strike clause was suspendable. *Petroleum Workers* involved the right of the employer to subcontract work and testimony showed that such a clause had been sought by the union for many years and on each occasion that proposals limiting the right of the employer on contract work out had been rejected. Moreover, in *Petroleum Workers* there was involved a question of collateral estoppel because in an earlier decision between the same parties, involving the same type of dispute and the same arbitration provisions, a decision against arbitrability had been rendered and had not been appealed. In the *Warrior & Gulf* case, *supra,* which also involved the right of the employer to subcontract, the arbitration provisions were limited only by a general restriction to "matters***strictly a function of management."

On the other hand, in the instant case, the arbitration provisions are so broad that the parties felt it necessary to exclude from the arbitration process *"any difference arising incident to negotiation of the terms of a new agreement . . ."*[3] (App. 8, Article IX). Article X of the collective bargaining agreement between the parties (App. 9) specifically requires that the very dispute involved here shall be the subject of arbitration by providing that "there shall be no stoppage of work, either by *strike or lockout* during the term of this agreement or disputes over matters relating to this agreement." All such matters must be

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(c) the establishment by the Company of new policies, practices, customs or usages during the term of this Agreement. 52 LRRM 2679

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[3] The record references are to the Appendix to Appellants' Brief in the U. S. Court of Appeals for the Fourth Circuit, copies of which have been filed herein by Petitioner.

handled in accordance with the arbitration provisions. Under Article XII (App. 9), it has been agreed that "fruitless controversies must be avoided"; that both parties will "settle all differences as provided by the terms of this contract"; and that, "under all circumstances, operations shall continue without interference or interruption until all differences are settled by conciliation or arbitration."

In *Humble Oil Co. v. Industrial Workers Union,* 337 F. 2d 321 (5 Cir., 1964), the arbitration provision there involved, although narrower than in the instant case, was found by the Court to require arbitration. The employer attempted to rely on the *Petroleum Workers* case, *supra,* but its contentions were rejected by the court as follows:

> "That case is readily distinguishable on a number of grounds. First and foremost, the contract there involved did not contain an unequivocal no-strike provision, as here, but the no-strike clause was specifically suspendable on a refusal to arbitrate. Second, in that case arbitrable grievances related to 'Questions directly involving or arising from applications, interpretations or alleged violations of the terms of this agreement.' 324 F. 2d at 905, 54 LRRM 2598. That is much narrower than 'a good faith claim by one party that the other party has violated a written provision of this agreement.' (Article 251, quoted supra.) The word 'alleged' in the Petroleum Workers case modified only 'violations,' while under Article 251 of the present contract the 'good faith claim' might relate to the interpretation of the written provision of the contract. There are other differences." [57 LRRM 2114]

Petitioner has insisted throughout the litigation of this case that its action in locking out Respondent's members is not a lockout under the terms of the agreement. The Court below properly found that this was a matter for the arbitrator to decide on the merits. Petitioner also has insisted that no dispute existed between it and Respondent

prior to the Respondent's decision to lock out the members of Respondent. The Court also properly found that once objection was made by Respondent to the lockout, a bona fide dispute existed and that dispute became the subject of arbitration.

A secondary reason for the grant of the Petition asserted by Petitioner is that the Court of Appeals for the Fourth Circuit has adopted a view, in a case in no way connected with the instant one, that would seem contrary to the decisions of this Court. Petitioner thus suggests that in the case of *A. S. Abell Co. v. Baltimore Typographical Union No. 12, supra.*, the Fourth Circuit wrongfully decided that the question of arbitrability should be decided by the arbitrator rather than by the Court. That legal question is not present here. The Court below said:

> *"We hold that there is a bona fide dispute over the interpretation of the agreement, and that Article IX clearly provides that such misunderstandings are to go to arbitration. Whether the particular conduct of the employer constitutes a 'lockout' is one of the issues that the arbitrator has been empowered to decide."* [Emphasis supplied.]

Respectfully submitted,

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